

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

lower leg, and at a surgical site on his left ankle after he slipped on a wet floor in the bathroom of the employing establishment. He related that he had sustained prior meniscal tears in his left knee from an earlier employment injury. Appellant stopped work on June 22, 2015 and returned to work on June 25, 2015. OWCP assigned the claim File No. xxxxxx486.

A physician assistant evaluated appellant on June 22, 2015. In an attending physician's report (Form CA-20) dated July 1, 2015, she obtained a history of his slipping and falling on his left foot and reinjuring his left knee. The physician assistant diagnosed left foot pain.

On June 24, 2015 Dr. Steven Shin, a Board-certified orthopedic surgeon, indicated that appellant was status post an open reduction and internal fixation procedure of the left ankle with acute or chronic left knee pain.<sup>2</sup> He diagnosed left foot pain and a left bimalleolar nondisplaced fracture.

In a July 24, 2015 report, Dr. Gerald I. West, who specializes in family medicine, obtained a history of appellant twisting his left knee after slipping on a wet floor at work. He noted that on March 31, 2015 appellant had undergone an open reduction and internal fixation of the left ankle and had a history of severe left knee degeneration and a lateral meniscus tear. Dr. West reviewed the findings from a 2014 magnetic resonance imaging (MRI) scan study and recommended another MRI scan study "in light of [appellant's] most recent accident in order to distinguish between an aggravation [*versus*] [e]xacerbation injury." He diagnosed left knee joint pain, traumatic arthritis of the left knee, and derangement of the left lateral meniscus. Dr. West advised that the findings were consistent with the alleged injury and that appellant's history was "within reasonable medical probability of causing [appellant's] present symptomatology." He provided work restrictions.<sup>3</sup>

Dr. West, on July 27, 2015, noted that appellant had slipped on June 22, 2015 twisting his left knee and diagnosed joint pain, traumatic arthritis, and derangement of the lateral meniscus of the left knee.<sup>4</sup> He again asserted that the findings were "consistent with [appellant's] alleged injury."

By decision dated August 14, 2015, OWCP denied appellant's traumatic injury claim. It found that he had not submitted sufficient medical evidence to establish that he sustained a diagnosed condition causally related to the accepted June 22, 2015 work incident.

Appellant, on August 28, 2015, requested an oral hearing before an OWCP hearing representative.

Dr. West, in a note dated September 1, 2015, discussed his findings from his October 17, 2014 report which noted that appellant had sustained an acceleration of degenerative changes and

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<sup>2</sup> A portion of the June 24, 2015 report is redacted. In a work status report, Dr. Shin found that appellant was unable to work on June 23 and 24, 2015 and could resume his usual duties on June 25, 2015.

<sup>3</sup> In a July 24, 2015 Form CA-20, Dr. West diagnosed left knee joint pain. He did not respond to the question of whether the condition was caused or aggravated by an employment activity.

<sup>4</sup> In a July 27, 2015 attending physician's supplemental report (Form CA-20a), Dr. West found that appellant could work with restrictions from July 24 through August 31, 2015.

a meniscal tear due to injuries on either December 12, 2013 or April 14, 2014.<sup>5</sup> He noted that OWCP had denied appellant's claim for a June 22, 2015 injury. Dr. West related:

"It is within reasonable medical probability that the injury [appellant] sustained to his left knee on June 22, [2015] can be considered an exacerbation. Each time he reinjures the knee, his functional capacity to walk/stand is adversely affected ... similar to the injuries he sustained on December [12,] 2013 and April 13, 2014, the injury on June 22, 2015 has accelerated his symptoms of pain, swelling, and instability in the knee."<sup>6</sup>

In a report dated February 11, 2016, Dr. G.B. Ha'Eri, a Board-certified orthopedic surgeon, indicated that he had evaluated appellant on October 7, 2015 and January 27, 2016 for left knee injuries sustained on December 21, 2013, April 14, 2014, and June 22, 2015. He discussed appellant's history of a 1987 left knee fracture while in the military and left knee injuries on December 21, 2013 and April 14, 2014 in altercations with psychiatric patients. Dr. Ha'Eri diagnosed left knee osteoarthritis due to the 1987 left knee injury and subsequent surgery, an aggravation of the preexisting left knee osteoarthritis due to the December 21, 2013, April 14, 2014, and June 22, 2015 work injuries, and a left knee torn lateral meniscus "more likely to have been caused by the industrial injuries of December 21, 2013 and April 14, 2014." He related:

"Based on [the] history provided by [appellant], my physical examination and review of the medical records, it is the opinion of the undersigned that the industrial injuries of December 21, 2013, April 14, 2014, and June 22, 2015 aggravated the preexisting condition of his left knee, which was post[-]traumatic osteoarthritis, and also caused a torn lateral meniscus.

"The mechanism of the injuries described by [appellant] was consistent with the physical altercation with the psychiatric patients dated December 21, 2013 and April 14, 2014 and his slip and twisting injury to the left knee dated June 22, 2015 when he was walking with a walker boot after the surgical repair of his left ankle fracture."

On February 22, 2016 appellant requested a review of the written record in lieu of an oral hearing. He asserted that he had sustained an injury on December 21, 2013, assigned OWCP File No. xxxxxx153, an injury on April 14, 2014, assigned File No. xxxxxx561, and an injury on June 22, 2015 under the current file number. Appellant questioned why OWCP had not combined the case numbers as they were medically connected. He noted that an OWCP hearing representative had instructed OWCP to further develop the medical evidence in File No. xxxxxx561.

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<sup>5</sup> In an August 11, 2015 work status report, Dr. Shin found that appellant should perform modified work on August 11, 2015 and could resume his usual employment on August 12, 2015.

<sup>6</sup> In an August 31, 2015 Form CA-20a, Dr. West found that appellant could perform modified employment.

By decision dated April 6, 2016, OWCP's hearing representative affirmed the August 14, 2015 decision. She found that the opinion of Dr. Ha'Eri failed to describe in detail the employment incident or address the natural progression of appellant's preexisting condition.

Dr. Ha'Eri, in a report dated March 16, 2017, diagnosed a permanent aggravation of preexisting osteoarthritis of the left knee due to December 21, 2013, April 14, 2014, and June 22, 2015 work injuries. He further opined that appellant had a torn lateral meniscus, but continued to work. Dr. Ha'Eri related, "By not undergoing the surgery intervention and continuing to work, the injuries of December 21, 2013, April 14, 2014, and June 22, 2015 left [appellant] with permanent aggravation of a preexisting condition of his left knee and in fact accelerated the process of breakdown of the articular cartilage in his left knee, as well as extending the tear in the lateral meniscus." He indicated that he had reviewed an April 21, 2016 report from Dr. Michael Einbund, a Board-certified orthopedic surgeon, and disagreed with his finding that appellant sustained only a temporary aggravation of his left knee.<sup>7</sup>

On April 4, 2017 counsel requested reconsideration. He related that he was submitting January 27, 2016 and March 16, 2017 reports from Dr. Ha'Eri.<sup>8</sup> Counsel asserted that OWCP had accepted that appellant sustained unilateral primary osteoarthritis of the left knee due to his April 14, 2014 work injury in File No. xxxxxx561 based on the report of Dr. Einbund. He contended that Dr. Ha'Eri disagreed with the opinion of Dr. Einbund and had provided a reasoned explanation why the work injuries accelerated and exacerbated the progression of his preexisting left knee osteoarthritis.

By decision dated January 4, 2018, OWCP denied modification of its April 6, 2016 decision. It reviewed Dr. Ha'Eri's March 16, 2017 report and found that he failed to address how the June 22, 2015 work incident caused a further left knee injury.

On appeal appellant questions whether OWCP reviewed the merits of his case. He asserts that the medical evidence supports that he sustained an injury as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>9</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

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<sup>7</sup> The record relevant to the current appeal does not contain an April 21, 2016 report from Dr. Einbund.

<sup>8</sup> OWCP received a March 16, 2017 report from Dr. Ha'Eri with the request for reconsideration.

<sup>9</sup> *Supra* note 1.

employment injury.<sup>10</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>11</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>12</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>13</sup>

OWCP's procedures provide:

"Doubling is the combination of two or more case files. It occurs when an employee has sustained more than one injury and it is necessary to combine all of the records in one case folder. The case records are kept separately but travel under one claim number, which is known as the master file."<sup>14</sup>

Regarding when to double cases, OWCP procedures state:

"Cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files. Cases meeting one of the following tests must be doubled

"(1) A new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc."<sup>15</sup>

OWCP procedures further provide that cases should be doubled as soon as the need to do so becomes apparent.<sup>16</sup>

### **ANALYSIS**

The Board finds that the case is not in posture for decision.

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<sup>10</sup> See *E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>11</sup> See *P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>12</sup> See *V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>13</sup> *Id.*

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(a) (February 2000).

<sup>15</sup> *Id.* at Chapter 2.400.8(c)(1).

<sup>16</sup> *Id.* at Chapter 2.400.8.

OWCP accepted that the employment incident of June 22, 2015 occurred as alleged. It denied appellant's claim after finding that he had not submitted sufficient medical evidence establishing that he sustained a diagnosed condition as a result of slipping on a wet floor on June 22, 2015.

In reports dated July 24 and 27, 2015, Dr. West indicated that appellant twisted his left knee at work when he slipped on a wet floor. He related that he was status post left ankle surgery on March 31, 2015 and recommended an updated MRI scan study to determine whether the latest injury constituted an aggravation or exacerbation of his condition. Dr. West also noted that appellant had severe degeneration of the left knee with a meniscal tear. He diagnosed left knee joint pain, traumatic arthritis of the left knee, and derangement of the left lateral meniscus. Dr. West indicated that the examination findings were consistent with the alleged injury and current symptoms.

On August 31, 2015 Dr. West advised that appellant sustained an acceleration of a degenerative knee condition and a meniscal tear due to either December 12, 2013 or April 14, 2014 work injuries. He opined that the June 22, 2015 work incident exacerbated his condition and that the December 2013, April 2014, and June 2015 injuries aggravated the pain and instability of his left knee.

Dr. Ha'Eri, in a report dated February 11, 2016, opined that work injuries on December 21, 2013, April 14, 2014, and June 22, 2015 aggravated appellant's preexisting left knee osteoarthritis and resulted in a lateral meniscal tear. On March 16, 2017 he advised that he had experienced a permanent left knee aggravation with an acceleration of the breakdown of left knee articular cartilage and an extension of a lateral meniscus tear due to injuries on December 21, 2013, April 14, 2014, and June 22, 2015.

The record supports that appellant had claims for prior work injuries on December 21, 2013 under OWCP File No. xxxxxx153 and April 14, 2014 under OWCP File No. xxxxxx561. Dr. West and Dr. Ha'Eri provided medical reports addressing work incidents on December 21, 2013, April 14, 2014, and June 22, 2015. OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files.<sup>17</sup> If a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.<sup>18</sup> Consequently, for a full and fair adjudication of appellant's claims the files should be doubled. The Board will remand the case to OWCP for doubling of File Nos. xxxxxx153 and xxxxxx561 with the current claim, File No. xxxxxx486, and to further consider whether he sustained either an injury on June 22, 2015 due to the accepted work incident or progression of a previously accepted work injury.<sup>19</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision,

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<sup>17</sup> See *C.R.*, Docket No. 17-1262 (issued May 21, 2018).

<sup>18</sup> See *supra* note 15; see also *M.M.*, Docket No. 17-1150 (issued January 26, 2018).

<sup>19</sup> See *A.V.*, Docket No. 16-1370 (issued April 14, 2017).

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 4, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board